

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD D. KNIGHT,

Plaintiff-Appellant,

v

RHOADES AVIATION, INC and JACK
RHOADES,

Defendants-Appellees.

UNPUBLISHED

January 12, 2006

No. 255952

Oakland Circuit Court

LC No. 2002-040201-CZ

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order dismissing his contract and tort claims for lack of personal jurisdiction under MCR 2.116(C)(1) and for failing to state a claim on which relief may be granted under MCR 2.116(C)(8). We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

This action arises out of agreements plaintiff's corporation¹ and defendants made in 1994 to purchase and operate an aircraft. Plaintiff claims that defendants' failure to maintain his aircraft in an airworthy condition entitles him to relief for breach of contract, breach of warranties, negligence, and fraud. The threshold issue is whether Michigan courts have personal jurisdiction over either one or both defendants. The trial court found in the negative and granted summary disposition to defendants under MCR 2.116(C)(1). We review a trial court's grant or denial of summary disposition and a trial court's jurisdiction rulings de novo. *Electrolines, Inc v Prudential Assurance Co, Ltd*, 260 Mich App 144, 152; 677 NW2d 874 (2003).

"The plaintiff bears the burden of establishing jurisdiction over the defendant, but need only make a prima facie showing of jurisdiction to defeat a motion for summary disposition." *Jeffrey v Rapid American Corp*, 448 Mich 178, 184; 529 NW2d 644 (1995) (internal citation omitted). Parties may submit affidavits "to support or oppose the grounds asserted in the [summary disposition] motion." MCR 2.116(G)(2). The court must consider the affidavits

¹ In a separate agreement, plaintiff's corporation assigned its interest to plaintiff in 1997. Thus, plaintiff brings the instant claim in his individual capacity.

together with any other documentary evidence submitted by the parties. MCR 2.116(G)(5). All factual disputes for the purpose of deciding the motion are resolved in the nonmovant's favor. *Jeffrey*, *supra* at 184.

The Due Process Clause of the Fourteenth Amendment protects an individual's liberty interest in not being subject to the binding judgments of a forum with which the person has established no meaningful "contacts, ties, or relations." *Int'l Shoe Co v Washington*, 326 US 310, 319; 66 S Ct 154; 90 L Ed 95 (1945); *Witbeck v Cody's Ranch Inn*, 428 Mich 659, 666; 411 NW2d 439 (1987). "The constitutional touchstone is whether the defendant purposefully established minimum contacts in the forum state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice." *Witbeck*, *supra* at 666 (internal quotations omitted). In Michigan, a party is subject to the general personal jurisdiction of the Michigan court system if it 1) incorporates under Michigan law, 2) consents to personal jurisdiction, or 3) carries on a continuous and systematic part of its general business in Michigan. MCL 600.711. The first two conditions are not satisfied, thus the only condition at issue is the third.

First we consider defendant Rhoades Aviation. Plaintiff averred that defendant Rhoades Aviation routinely flies to and from Michigan, servicing Michigan clients and benefiting from Michigan's legal and business systems. Some of its aircraft were allegedly based in Michigan. According to plaintiff, defendant Rhoades Aviation purchased fuel and aircraft services in Michigan. Plaintiff also alleged that defendant Rhoades Aviation actively solicits its business in Michigan by sending daily faxes to prospective clients. Assuming these facts are true, Rhoades Aviation has purposefully and repeatedly availed itself of the benefits of doing business in Michigan. It logically follows that defendant Rhoades Aviation falls under the general personal jurisdiction of the Michigan courts. Hauling defendant Rhoades Aviation into a Michigan court would not violate traditional notions of fair play and substantial justice because it already has sufficient presence within the state through its continuous and systematic business activities. In sum, assuming the truth of plaintiff's affidavits submitted to the court, defendant Rhoades Aviation has sufficient minimum contacts with Michigan that make its business here systematic and continuous. Accordingly, MCL 600.711 applies and there is no due process violation.

We now consider defendant Jack Rhoades. Our review of the record reveals that the record is bereft of any factual allegations stating defendant Jack Rhoades, in his individual capacity, has continuous and systematic business contacts with Michigan. In particular, plaintiff's affidavit only mentions defendant Jack Rhoades twice and it is to identify him as a defendant and in reference to his obligations under the operating agreement. The remaining allegations about business activities in Michigan name defendant Rhoades Aviation on their face only. Plaintiff therefore has not met his burden of establishing jurisdiction over defendant Jack Rhoades, and we conclude that defendant Jack Rhoades does not fall under the general personal jurisdiction of Michigan courts. Considering the dearth of evidence provided by plaintiff in relation to defendant Jack Rhoades, plaintiff may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Plaintiff argues in the alternative that the court has limited personal jurisdiction over defendants. Because we have determined that the court has general personal jurisdiction over

Rhoades Aviation, we only consider plaintiff's argument as it applies to defendant Jack Rhoades. MCL 600.715 sets out the following relevant conditions for personal jurisdiction.

The existence of any of the following relationships between a corporation or its agent and the state shall constitute a sufficient basis of jurisdiction to enable the courts of record of this state to exercise limited personal jurisdiction over such corporation and to enable such courts to render personal judgments against such corporation arising out of the act or acts which create any of the following relationships:

(1) The transaction of any business within the state.

* * *

(4) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(5) Entering into a contract for services to be performed or for materials to be furnished in the state by the defendant. [MCL 600.715.]

When analyzing whether the exercise of limited personal jurisdiction over a given defendant is proper, a two-step inquiry is generally applied. "First, the exercise of limited personal jurisdiction must be consistent with the requirements of due process." *Jeffrey, supra* at 184-185. "Second, defendant must come within the terms of MCL 600.715." *Id.*

Three conditions must be met to satisfy due process. First, the defendant must personally avail himself of the privilege of conducting activities in Michigan. *Aaronson v Lindsay & Hauer Int'l Ltd*, 235 Mich App 259, 265; 597 NW2d 227 (1999). Second, the action must arise from the defendant's activities in the state. *Id.* Third, the defendant's activities must be so substantially connected with the state of Michigan to make the exercise of jurisdiction over the defendant reasonable. *Id.*

As acknowledged above, defendant Jack Rhoades has not purposefully availed himself of the benefits of doing business in Michigan. The record lacks any facts indicating that the cause of action arises from defendant Jack Rhoades' activities in Michigan. Plaintiff did not indicate where defendant's alleged action or inaction that led to plaintiff's injury actually occurred. Nor did plaintiff indicate where the parties entered into the contract, the location of the aircraft at the time of sale, or the contemplated location of maintenance and operating activities. Other than merely referencing plaintiff's corporation as a Michigan company, the agreements refer to no Michigan activity. Because the record illustrates that the first two prongs of the due process analysis are not satisfied, it is unnecessary to consider whether exercise of jurisdiction over defendant Jack Rhoades would be reasonable. *Aaronson, supra* at 265.

Further, it is clear that the second step of the personal jurisdiction analysis is not met because defendant Jack Rhoades does not come under the terms of MCL 600.715. *Jeffrey, supra* at 184-185. No facts identified any Michigan business transactions. Though the operating agreement includes an insurance clause, nothing in the record indicates, as MCL 600.715(4) requires, that the aircraft or risk were located in Michigan at the time of contracting. Finally,

nothing in the record establishes that any goods or services pursuant to the agreement were delivered or furnished, respectively, in Michigan. Michigan therefore does not have limited personal jurisdiction over this defendant and the case against him must be dismissed.

Plaintiff also challenges the trial court's order dismissing his claims under MCR 2.116(C)(8) for failing to state a claim upon which relief may be granted. A grant or denial of summary disposition based upon a failure to state a claim is reviewed de novo on appeal. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint. *Adair, supra* at 119. The pleadings alone are considered. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277, 681 NW2d 342 (2004). All well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant. *Adair, supra* at 119. The motion should be granted only where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Id.* Given our resolution of the jurisdictional issues, we only reach plaintiff's claims against defendant Rhoades Aviation.

Plaintiff's argument that the court improperly evaluated the merits of his claims is persuasive. Though the court's ruling was terse, its statement that "reasonable minds could not return a verdict" in favor of plaintiff is rather telling. The inquiry under MCR 2.116(C)(8) is whether a claim is legally adequate, not whether it will ultimately prevail at the close of proofs when the factfinder must render a verdict. The court appeared to confuse a cause of action with the right to judgment. See e.g., *Davis v Kramer Bros Freight Lines Inc*, 361 Mich 371, 376-377; 105 NW2d 29 (1960). We therefore turn to the adequacy of each claim as pleaded.

Plaintiff first claimed negligence. To state a claim for negligence, plaintiff must allege a duty that defendant owed plaintiff, a breach of that duty, damages, and that those damages were the proximate result of the defendant's breach. *Roulo v Automotive Club of Michigan*, 386 Mich 324, 328; 192 NW2d 237 (1971). A review of the record reveals that plaintiff failed to allege a duty. One paragraph of plaintiff's complaint identifies duties, but none that defendant Rhoades Aviation owed to plaintiff. The duties named pertain to maintaining the plane in an airworthy condition "in accordance with its manual and . . . regulations." Plaintiff cited no authority stating that the requirements of a manual or other regulations give rise to any duty defendant Rhoades Aviation allegedly owes plaintiff. Plaintiff may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims. *Wilson, supra* at 243.

In any event, it appears plaintiff is attempting to convert part of his contract claim, which we discuss below, into a tort claim. An action sounding in tort independent from a breach of contract claim requires the allegation of a violation of a legal duty separate and distinct from the contractual obligation. *Rinaldo's Construction Corp v Michigan Bell Telephone Co*, 454 Mich 65, 84; 559 NW2d 647 (1997). Plaintiff has not alleged the violation of a legal duty separate and distinct from a contractual obligation. *Id.* Hence, the court, though it adopted a different rationale, did not err in finding that plaintiff failed to state a cause of action in negligence. We will affirm when a trial court reaches the correct result even when it does so for the wrong reason. *Zdrojewski v Murphy*, 254 Mich App 50, 70-71; 657 NW2d 721 (2002).

Plaintiff claimed breach of contract second. To state a claim for breach of contract, plaintiff must allege a contract, a breach of that contract, and damages. M Civ JI 142.01, citing *McInerney v Detroit Trust Co*, 279 Mich 42, 46; 271 NW 545 (1937). Plaintiff's amended

complaint alleged that defendant Rhoades Aviation contracted to maintain the aircraft. Plaintiff also alleged that defendant Rhoades Aviation breached that contract when it failed to maintain the aircraft. Plaintiff also alleged that defendant Rhoades Aviation failed to spend insurance proceeds to finish repair of the aircraft necessary to make it airworthy. Because plaintiff has successfully alleged a contract, a breach of that contract, and damages, the court erred in finding that plaintiff failed to state a cause of action for breach of contract. *Id.*

Plaintiff's third count was for breach of warranties. To state a claim for breach of warranties, plaintiff must allege the existence of warranties, their breach, and damages as a proximate result of the breach. See e.g., *Borman's, Inc v Lake State Development Co*, 60 Mich App 175, 180-181; 230 NW2d 363 (1975). Plaintiff's complaint alleges that defendant Rhoades Aviation "warranted, expressly and impliedly, that [it] would perform or have performed all maintenance and required maintenance" Inspection of the purchase agreement reveals that the alleged warranty is actually a condition of the contract and not a separate warranty agreement giving rise to a cause of action other than breach of contract. Again, plaintiff appears to expand his contract claim into other areas. The court, though it adopted a different rationale, did not err in finding that plaintiff failed to state a cause of action for breach of warranties. *Zdrojewski, supra* at 70-71.

Finally, plaintiff claimed fraud. To state a cause of action for fraud, plaintiff must plead the following elements:

(1) That defendant made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth, and as a positive assertion; (4) that he made it with the intention that it should be acted upon by plaintiff; (5) that plaintiff acted in reliance upon it; and (6) that he thereby suffered injury. [*Hi-Way Motor Co v International Harvester Co*, 398 Mich 330, 336; 247 NW2d 813 (1976).]

Plaintiff's amended complaint alleges that defendant Rhoades Aviation intentionally and fraudulently cashed insurance proceeds, did not return the plane to an airworthy condition, charged for repetitive maintenance inspections while the aircraft sat, and that plaintiff suffered injuries and damages as a result of these detrimental actions. However, nothing in the complaint states that plaintiff somehow relied on the alleged misrepresentations. As such, plaintiff failed to plead an essential element of fraud. *Id.* Plaintiff cannot attempt to fill gaps in his pleadings on appeal. The court did not err in finding that plaintiff failed to state a cause of action for fraud.

Affirmed in part, reversed in part, and remanded for consideration of plaintiff's breach of contract claim against defendant Rhoades Aviation. Due to lack of personal jurisdiction, we affirm the dismissal of plaintiff's claims against defendant Jack Rhoades. We do not retain jurisdiction.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis